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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/220,986	12/23/1998	SAM SCHWARTZ	17649-20	5361

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EXAMINER

KISHORE, GOLLAMUDI S

ART UNIT PAPER NUMBER

1615

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/220,986

Applicant(s)

SCHWARTZ, SAM

Examiner

Gollamudi S. Kishore, Ph.D

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 6-20-05.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 34-63 is/are pending in the application.
- 4a) Of the above claim(s) 38 and 40-63 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 34-37 and 39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Applicant's election with traverse of Group I and species in claims 34-37 and 39 in the reply filed on 6-20-05 is acknowledged. The traversal is on the ground(s) that the embodiments differ only by the inclusion of inactive ingredients and/or varying uses. This is not found persuasive because they are distinct compositions as shown by their different classification and applicant has not placed on record that they are obvious variants.

The requirement is still deemed proper and is therefore made FINAL.

Claims included in the prosecution are 34-37 and 39.

### ***Claim Rejections - 35 USC § 112***

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 34-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear as to what is being conveyed by 'partial esters of lauric, palmitic, stearic and oleic acids' in claim 22. These fatty acids have a single carboxyl group and therefore, one can get only one type of esters and those esters are not partial esters.

Claim 34 is confusing. The claim recites two phases without reciting any specific nature of the phases. According to the claim the first phase is water soluble; if that were to be the case, how can Dead sea salts containing phase be considered as a second phase, since Dead sea salts are soluble in water as also evident from the dependent

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claim 35 and this hydrophilic phase will be soluble in the first phase forming a single phase (see lines 3-5 of claim 35).

According to claim 34, the amounts of salts in the second phase is equal to about 5 % and therefore, claim 35 which recites 10 % is inconsistent with claim 34 limitation. Similar is the case with water amounts.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claim 36 is rejected under 35 U.S.C. 102(e) as being anticipated by Stovraff (5,866,145) of record.

Stovraff teaches body cleanser compositions. The compositions are two phase compositions containing 67.33 % water and 50 to 80 % of Dead Sea salt (abstract and columns 1-2).

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 36 is rejected under 35 U.S.C. 102(b) as being anticipated by Biener (4,943,432) of record.

Biener teaches that Dead Sea water contains about 26 % by weight of mixed salts

and solids (col. 1, lines 29-30). This teaching meets the requirement of instant claim reciting 65-95 % water and at least 5 % of Dead sea salts.

***Claim Rejections - 35 U.S.C. § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stovraff (5,866,145) cited above.

As pointed out above, Stovraff teaches body cleanser compositions. The compositions are two phase compositions containing 67.33 % water and 50 to 80 % of

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Dead Sea salt (abstract and columns 1-2). What is lacking in Stovraff is the explicit teaching of water being deionized water and this water is in an amount of 75 %.

However, since Dead Sea salt itself contains various ions, the criticality of using deionized water in the composition is unclear. Therefore, in the absence of showing unexpected results, it is deemed obvious to one of ordinary skill in the art to use any pure water including deionized water and vary it amounts to obtain the best possible results.

7. Claim 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stovraff (5,866,145) cited above in combination with JP (08104607).

Stovraff as pointed out before discloses body polisher compositions (lotions) containing Dead Sea salts and 67.33 percent water (note the abstract, and columns 1-2). What is lacking in Stovraff is the use of lesser amounts of salts that is in amounts of 5 %.

JP (08104607) teaches that similarly teaches that Dead sea salt in cosmetic compositions prevents the aging of the skin and makes the skin beautiful and suggests the amounts of 0.1 to 5 % (abstract).

One of ordinary skill in the art would be motivated to change the amounts of the salt amount in Stovraff since JP teaches that the desired effects of skin beautification could be obtained even with 5 % of the salt.

8. Claims 34-37 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1479 199 of record, in view of JP 08113530, Biener (4943432), both are of record, or JP 08104607 by themselves or in combination.

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GB discloses scrubbing compositions containing salt. GB teaches the salt crystal amounts between 30 and 60 %. (note the entire patent, page 2, col. 1, line 23 through col. 2, line 126, Example 3 and claims in particular). GB however, does not teach that the salt is from Dead Sea. GB also lacks the teachings of using instant amounts of salt.

JP (08113 530) teaches that the salt obtained from Dead Sea salt has excellent skin beautifying actions (note the abstract).

JP (08104607) teaches that similarly teaches that Dead sea salt in cosmetic compositions prevents the aging of the skin and makes the skin beautiful and suggests the amounts of 0.1 to 5 % (abstract).

Biener similarly teaches that Dead Sea salt and a salt mixtures which is an excellent therapeutic agent for skin diseases (note col. 1, line 27 et seq.).


The use of the salt obtained from Dead Sea in the salt compositions taught by GB would have been obvious to one of ordinary skill in the art because of the excellent skin beautifying effects and the therapeutic effect taught by JP and Biener. In the absence of showing unexpected results, to vary the amounts of the salts is deemed to be a manipulative parameter to obtain the best possible results. One of ordinary skill in the art would be motivated to use amounts of salt around 5 % since JP 08104607 shows one can obtain the desired effects with these amounts.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gollamudi S. Kishore, Ph.D whose telephone number is (571) 272-0598. The examiner can normally be reached on 6:30 AM- 4 PM, alternate Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gollamudi S Kishore, Ph.D  
Primary Examiner  
Art Unit 1615

GSK